



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

VALLEY REGIONAL OFFICE

P.O. Box 3000, Harrisonburg, Virginia 22801

(540) 574-7800 FAX (804) 698-4178

Located at 4411 Early Road, Harrisonburg, Virginia

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Matthew J. Strickler  
Secretary of Natural and Historic Resources

David K. Paylor  
Director  
(804) 698-4000

Amy Thatcher Owens  
Regional Director

September 14, 2021

John King, President  
VPGC, LLC  
PO Box 228  
Hinton, VA 22831  
Sent by Email ([jking@vapgc.com](mailto:jking@vapgc.com))

RE: VPGC, LLC Consent Order  
VPGC, LLC – Hinton, Rockingham County  
VPDES Permit No. VA0002313

**DEQ-VRO**

**SEP 28 2021**

**Received**

Dear Mr. King:

On November 6, 2019, the Virginia Department of Environmental Quality (DEQ) issued a Notice of Violation (NOV) to VPGC, LLC for the facility noted above.

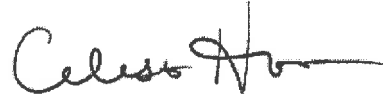
DEQ wishes to resolve this NOV by entering into a Consent Order with VPGC, LLC. DEQ's proposed Consent Order, including injunctive relief in Attachment A, is enclosed for your review. In addition to the proposed injunctive relief, the Consent Order includes a civil charge in the amount of \$9,750.

If VPGC agrees with the terms of the proposed Consent Order, please sign, date, and notarize the original copy of the Consent Order to my attention at the above address by September 28, 2021. The order is subject to public notice and comment, and approval by the State Water Control Board, before it becomes final. A copy of the fully executed order will be returned to you for implementation upon signature on behalf of the Board.

The enclosed Order, however, is not final and your comments are open to further

discussions. If you have questions or wish to discuss the proposed Consent Order, please contact me at (540)-830-4677 or [celeste.horton@deq.virginia.gov](mailto:celeste.horton@deq.virginia.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Celeste Horton", with a long horizontal flourish extending to the right.

Celeste Horton  
Enforcement Specialist

Enclosure

cc: Case File  
Regional Enforcement Manager  
Regional Compliance Manager



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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
VPGC, LLC  
FOR  
VPGC, LLC – Hinton  
VPDES Permit No. VA0002313**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and VPGC, LLC, regarding the VPGC, LLC – Hinton facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “305(b) report” means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility" or "Plant" means the VPGC, LLC – Hinton facility located at 6349 Rawley Pike, Hinton, VA 22831, Virginia, which treats and discharges poultry processing wastewater and sanitary wastewater generated within the poultry processing facility and stormwater generated in the area surrounding the facility.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "O&M" means operations and maintenance.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Permit" means VPDES Permit No. VA0002313, which was issued under the State Water Control Law and the Regulation to VPGC on March 1, 2015 and expired on February 29, 2020. The Permit was reissued on May 1, 2020 and expires on February 28, 2025.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand,

cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9  
VAC 25-31-10.

15. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
16. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "VPDES" means Virginia Pollutant Discharge Elimination System.
23. "VPGC" means VPGC, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. VPGC is a "person" within the meaning of Va. Code § 62.1-44.3.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. VPGC owns and operates the Plant. The Permit allows VPGC to discharge treated sewage and other industrial wastewater from the Plant, to Muddy Creek (Outfall 001), in strict compliance with the terms and conditions of the Permit.
2. Muddy Creek is located in the Potomac River Basin and Shenandoah River Subbasin. Muddy Creek is listed in DEQ's 305(b) report as impaired for bacteria and not meeting the General Standard (Benthics) for aquatic life use.
3. In submitting its DMRs, as required by the Permit, VPGC has indicated that it exceeded discharge limitations for whole effluent toxicity contained in Part I.A.1 of the Permit, for the monitoring periods from January – March 2018, October – December 2018, April – June 2019, and July – September 2019 that included the following data results:

Quarters	Outfall	Parameter	Concentration/Loading	Reported	Legal Requirement
January – March 2018	001	720-TUc - CHRONIC 3-BROOD STATRE CERIODAPHNIA DUBIA	Concentration Maximum	3.11 TU-C	2.17 TU-C
October – December 2018	001	720-TUc - CHRONIC 3-BROOD STATRE CERIODAPHNIA DUBIA	Concentration Maximum	4.54 TU-C	2.17 TU-C
April – June 2019	001	720-TUc - CHRONIC 3-BROOD STATRE CERIODAPHNIA DUBIA	Concentration Maximum	4.54 TU-C	2.17 TU-C
July – September 2019	001	720-TUc - CHRONIC 3-BROOD STATRE CERIODAPHNIA DUBIA	Concentration Maximum	4.54 TU-C	2.17 TU-C

4. On November 6, 2019, DEQ issued Notice of Violation (NOV) No. W2019-11-V-0001 to VPGC for Permit effluent limit violations.
5. On November 18, 2019, DEQ staff met with VPGC to discuss the November 2019 NOV. VPGC indicated that it would hire a consultant firm to help identify the source of the WET permit exceedances.
6. On November 26, 2019, VPGC met with Reid Engineering on site to evaluate processes. VPGS indicated that Reid Engineering was going to further evaluate the wastewater treatment system. VPGC also indicated that additional wastewater monitoring would be performed.
7. On December 16, 2019, VPGC submitted toxicity test results that indicated slight toxicity (chronic reproduction = 1.44 TUc) but did not exceed permit limits.

8. On January 31, 2020, VPGC submitted their 2020 first quarter toxicity test results that indicated slight toxicity (chronic reproduction = 1.44 TUc) but did not exceed permit limits.
9. On March 6, 2020, VPGC submitted monitoring results for heavy metals. The results for all parameters were below detection.
10. On March 27, 2020, VPGC submitted monitoring results for quaternary ammonium compounds and peracetic acid (PAA) and a concurrently run toxicity test at the Facility. The quaternary ammonium compounds monitoring results did not appear to be high enough to impair aerobic biological treatment; however, the PAA test result was 1.78 mg/L (aerobic biological treatment impairment threshold = 1.0 mg/L). PAA is an organic chemical compound used at the Facility as a sanitizer. The toxicity test results did not indicate toxicity in the effluent. In response to the PAA monitoring result, VPGC moved its thiosulfate feed to the flow equalization basin to try to neutralize the PAA in the effluent and proposed to install a new meter in the tank. VPGC stated they were planning on sending additional samples to the lab to gauge if they were successfully neutralizing the PAA.
11. On May 27, 2020, VPGC provided an update to DEQ that they suspect PAA as the cause of toxicity at the Facility. VPGC utilized PAA as an equipment sanitizer during the construction and startup of the eviscerating department at the Facility. The startup of the eviscerating department overlapped with the dates where toxicity related permit exceedances occurred. The new meter had not been installed yet due to maintenance issues and COVID-related delays. The new meter was set to be installed within one week. VPGC stated that it was planning on doing in-house PAA testing so they could run more frequent tests. The first sample for PAA resulted in 1.08 mg/L, and since then, all tests have been below 0.24 mg/L. The second quarter bioassay was conducted the week of May 6-12 and the results indicated no toxicity.
12. On June 11, 2020, VPGC submitted the second quarter toxicity test results that indicated no toxicity.
13. On June 29, 2020, DEQ requested that VPGC submit one additional WET test event to demonstrate that the steps taken by VPGC have adequately identified and corrected the issue.
14. On October 8, 2020, VPGC submitted the third quarter toxicity test results that indicated no toxicity.
15. On November 20, 2020, VPGC submitted the fourth quarter toxicity test results that indicated no toxicity.
16. On April 8, 2021, VPGC submitted the first quarter toxicity test results that indicated slight toxicity (chronic reproduction = 2.27 TUc) but did not exceed permit limits.

17. On July 8, 2021, VPGC submitted the second quarter toxicity test results that indicated slight toxicity (chronic reproduction = 1.51 TUc) but did not exceed permit limits.
18. In submitting its DMRs, as required by the Permit, VPGC has indicated that it exceeded discharge limitations for whole effluent toxicity contained in Part I.A.1 of the Permit, for the monitoring periods from July – September 2021. The DMR included the following data results:

Quarters	Outfall	Parameter	Concentration/Loading	Reported	Legal Requirement
July – Sept 2021	001	704-TUa – ACUTE 48 HR STATRE CERIODAPHNIA DUBIA	Concentration Minimum	25%	100%

19. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
20. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
21. Permit Part I.A.1 establishes numeric discharge limitations for specified effluent parameters.
22. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
23. The Department has issued no permits or certificates to VPGC other than VPDES Permit No. VA0002313 and the General Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Watershed in Virginia, Registration No. VAN00009.
24. Muddy Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
25. Based on the results of results of the discharge monitoring reports submitted for the quarterly monitoring periods of January – March 2018, October – December 2018, April – June 2019, and July – September 2019, the Board concludes that VPGC has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) through C(11), above.
26. VPGC has submitted documentation that verifies that the violations as described in paragraphs C(3) through C(11), above, have been corrected.



27. In order to complete its return to compliance, DEQ staff and representatives of VPGC have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders VPGC, and VPGC agrees to:

1. Perform the actions described in Appendix A of this Order, and
2. Pay a civil charge of \$9,750 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

VPGC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, VPGC shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of VPGC for good cause shown by VPGC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2019-11-V-0001 dated November 6, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, VPGC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. VPGC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. VPGC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by VPGC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. VPGC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. VPGC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. VPGC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and VPGC. Nevertheless, VPGC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after VPGC has completed all of the requirements of the Order;
  - b. VPGC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to VPGC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve VPGC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by VPGC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of VPGC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind VPGC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of VPGC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, VPGC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

Amy Owens, Regional Director  
Department of Environmental Quality

VPGC, LLC voluntarily agrees to the issuance of this Order.

Date: 9/26/2021 By: JH, President  
(Person) (Title)  
VPGC, LLC

Commonwealth of Virginia  
City/County of Virginia

The foregoing document was signed and acknowledged before me this 28<sup>th</sup> day of  
September, 2021, by John King who is  
President of VPGC, LLC, on behalf of the company.

Carmie E. Liskey  
Notary Public  
342124  
Registration No.

My commission expires: December 31, 2021

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **1. WET Investigation**

- a. By March 1, 2022, VPGC shall complete an investigation of the source of the August 2021 WET exceedance and shall prepare a report for DEQ review. The report shall include:
  - i) The results of any sampling, monitoring, evaluation, and/or assessment related to the WET investigation;
  - ii) Identification of any chemicals, including cleaning agents, utilized in the production process or wastewater treatment process that could result in WET exceedances;
  - iii) Identification of any process or operational control changes, including a plan and schedule to initiate and complete the corrective action, resulting from the investigation;
  - iv) Identification of any structural changes necessary to the manufacturing process or wastewater treatment process, including a plan and schedule to initiate and complete the corrective action, resulting from the investigation.
- b. VPGC shall submit the WET investigation report to DEQ within 30 days after completion of the investigation referenced above in 1.a.

### **2. Reporting**

VPGC shall submit a progress report to DEQ by December 10, 2021. The progress report shall contain:

- a. A summary of all work completed since the investigation began in accordance with this Order;
- b. A projection of the remaining work to be completed in accordance with this Order; and
- c. A statement regarding any anticipated problems in complying with this Order.

### **3. DEQ Contact**

Unless otherwise specified in this Order, VPGC shall submit all requirements of Appendix A of this Order to:

Celeste Horton  
Enforcement Specialist  
VA DEQ – Valley Regional Office  
4411 Early Road, Harrisonburg, VA 22801  
540-830-4677  
Celeste.horton@deq.virginia.gov